

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 91-475-C - ORDER NO. 91-1080 ✓
DECEMBER 4, 1991

IN RE:	Application of International)	ORDER
	Telecommunications Exchange Corporation)	GRANTING
	for a Certificate of Public Convenience)	CERTIFICATE
	and Necessity.)	

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of the Application of International Telecommunications Exchange Corporation (Intex) requesting a Certificate of Public Convenience and Necessity authorizing it to operate as a reseller of telecommunications services in the State of South Carolina. Intex's Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 1990) and the Regulations of the Public Service Commission of South Carolina.

The Commission's Executive Director instructed Intex to publish a prepared Notice of Filing and Hearing in newspapers of general circulation in the affected areas one time. The purpose of the Notice of Filing and Hearing was to inform interested parties of Intex's Application and the manner and time in which to file the appropriate pleadings for participation in the proceeding. Intex complied with this instruction and provided the Commission with proof of publication of the Notice of Filing and Hearing.

Petitions to Intervene were filed by Southern Bell Telephone & Telegraph Company (Southern Bell) and the South Carolina Department of Consumer Affairs (the Consumer Advocate).

A hearing was commenced on Wednesday, November 13, 1991, at 3:00 p.m. in the Commission's Hearing Room. The Honorable Marjorie Amos-Frazier presided. Frank R. Ellerbe, III, Esquire, represented Intex. Carl F. McIntosh, Esquire, represented the Consumer Advocate; Fred A. Walters, Esquire, represented Southern Bell; and F. David Butler, Staff Counsel, represented the Commission Staff.

Intex presented the testimony of S. Raymond McBride in support of its application. Mr. McBride explained Intex's request for certification to operate as a reseller of interexchange telecommunications services in South Carolina. He stated that the Applicant, a Delaware Corporation authorized to do business in the State of South Carolina, offers out bound message telecommunications service, inbound 800 number service and travel card service to its customers. McBride outlined Intex's qualifications, background, and technical capabilities. Services proposed by the Company include:

- 1) INTEX NET Long Distance Service which allows customers to place direct dial (1+) calls to terminating locations. Customers are presubscribed to the network and may access this long distance service by switched or dedicated access facilities.
- 2) INTEX 800 service which is an inward WATTS service. This service permits termination of interstate and intrastate calls from a diverse geographic location to customer's local exchange lines or

to dedicated access lines facilities.

3) INTEX Travel Card Service which allows customers to place direct dial calls to terminating locations from locations other than their normal place of business. An 800 access number must be dialed to reach the carrier.

According to witness McBride, the Applicant's target market includes small and large business customers. Each customer is charged individually for each call placed through the Applicant and customers are billed based on their use of the Applicant's long distance network. Current services offered by the Applicant are not distance sensitive for billing purposes. Rates for these services are based on call duration and type of access. No installation charges apply.

The Applicant's primary underlying carrier is MCI. The Applicant does not intend to offer operator assisted calling at this time. Customers subscribed to the Applicant placing a call by dialing 0 will be routed to the local exchange carrier or to the underlying carrier, depending on whether the call is intraLATA or interLATA.

Southern Bell presented the testimony of C.L. Addis. Addis testified that Southern Bell opposes the resale of MCI's V Net services to South Carolina customers. Addis stated that he did not believe that the blocking or screening of intraLATA calls could be done by MCI in V Net services. Therefore, Southern Bell should be compensated by Intex, when Intex functions as a reseller, for the unauthorized completion of any intraLATA calls over facilities

other than those approved for resale, as ordered by the Commission in Docket No. 86-187-C, Order No. 86-793, issued August 5, 1986.

During the course of the hearing, Southern Bell moved to dismiss the Company's Application on several grounds. First, Southern Bell stated that the Company's Application failed to meet the statutory requirements of S.C. CODE ANN. §§58-9-520, 58-9-350, and 58-9-570, which relate to notice, depreciation, and factors that the Commission shall consider in rate cases. Second, Southern Bell argued that the relief sought by the Company should not be granted for the same reasons. Third, Southern Bell argued that MCI's V Net is similar to AT&T's Software Defined Network (SDN). Southern Bell believes that such services are only usable on an interLATA basis, and that resale of V Net on an intraLATA basis would be a violation of the underlying carrier's (in this case, MCI's) certificate, and, therefore, the Company's application should be dismissed, since the Company apparently intends to resell V Net services on an intraLATA basis.

The Commission must deny the Motion on all grounds. First, in keeping with the statutory language of §58-9-520, we hold that the section does not apply to the case at bar. Section 58-9-520 requires that a telephone utility give the Commission not less than thirty days' notice that it intends to file a schedule setting forth "proposed changes" in rates. Clearly, this language indicates the section applies to new rates, not the establishment of rates. The notice required by the statute is therefore not required, and Section 58-9-520 is therefore inapplicable. Further,

the language of §58-9-350 merely gives a telephone utility the right, unless the Commission so requires, to charge depreciation as an operating expense. The Commission will not require Intex to do this in this proceeding. In any event, there is no violation of §58-9-350. With regard to §58-9-570, we hold that this section is not applicable in cases like this one where resellers seek a Certificate of Public Convenience and Necessity and submit a tariff containing American Telephone and Telegraph's maximum rates, pursuant to our Order No. 84-622, issued in Docket No. 84-10-C, dated August 2, 1984. The various factors contained in §58-9-570 for a typical rate determination simply do not apply to a rate establishment situation. For these reasons, Southern Bell's Motion based on the statutory grounds must fail. Further, pursuant to the second ground of Southern Bell's motion, we cannot deny the relief sought by Intex on these same points, for the same reasons as stated above.

With regard to Southern Bell's ground related to the allegedly improper intraLATA resale of V Net, we hold only that, as with any reseller, if the Certificate is granted, a reseller may resell only those services of facility based carriers which have been approved for resale on an intrastate, intraLATA basis. While not deciding whether or not V Net is one of these services, we do hold that the proposed resale of V Net is not grounds to grant Southern Bell's motion to dismiss the Company's application.

Also during the hearing, the Consumer Advocate moved to require the Company to omit Paragraph 2.6 of its tariff as

submitted, since the testimony of Mr. McBride revealed that the "advance payments" mechanism addressed in that section is never employed. The Company has stated that it has no problem with the omission, therefore, we grant the Consumer Advocate's Motion.

After full consideration of the applicable law and of the evidence presented by Intex, the Consumer Advocate, Southern Bell and the Commission Staff, the Commission hereby issues its findings of fact and conclusions of law.

FINDINGS OF FACT

1. Intex is incorporated under the laws of the State of Delaware, and is licensed to do business as a foreign corporation in South Carolina.
2. Intex operates as a non-facilities based reseller of interexchange services, and wishes to do so on an interLATA basis in South Carolina.
3. Intex has the experience, capability, and financial resources to provide the services as described in its application.
4. Southern Bell and other local exchange carriers (LEC's) should be compensated for any unauthorized intraLATA calls completed through Intex's service arrangements.

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Intex to provide intrastate, interLATA service through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications

Service (MTS), Foreign Exchange Service, Private Line Services, or any other services authorized for resale by tariffs of facility based carriers approved by the Commission.

2. That all intrastate intraLATA calls must be completed over intraLATA WATS, MTS, private and foreign exchange lines or any other service of facility based carriers which have been approved for resale on an intraLATA basis. Any intraLATA calls not completed in this manner would be considered unauthorized traffic and the Company will be required to compensate the LEC's for any unauthorized intraLATA calls it carries, pursuant to Commission Order No. 86-793 in Docket No. 86-187-C.

3. The Commission adopts a rate design for Intex for its resale services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate level with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communication Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984). Intex shall file maximum rate tariffs within 30 days of the date of this Order.

4. Intex shall not adjust its rates below the approved maximum level without notice to the Commission and to the public. Intex shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. Any proposed increase in the maximum rate level reflected in the tariff which would be applicable to the general body of Intex's

subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 1990).

5. Intex shall file its tariff and an accompanying price list to reflect the Commission's findings within thirty (30) days of the date of this Order.

6. Intex is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

7. With regard to Intex's resale of services, an end user should be able to access another interexchange carrier or operator service provider if they so desire.

8. Intex shall resell the services of only those interexchange carriers or LEC's authorized to do business in South Carolina by this Commission. If Intex changes underlying carriers, it shall notify the Commission in writing.

9. Intex shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports is indicated on Attachment A.

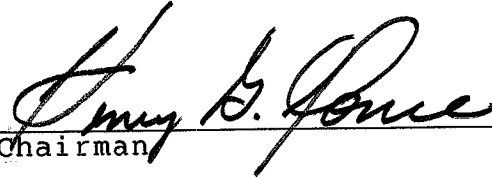
10. Southern Bell's Motion to Dismiss the Company's Application is denied.

11. The Consumer Advocate's motion to require the Company to omit Paragraph 2.6 of its tariff as submitted is granted. The Company shall remove said Paragraph from its tariff.

12. This Order shall remain in full force and effect until further Order of the Commission.


BY ORDER OF THE COMMISSION:

VICE Chairman



ATTEST:

Deputy



Executive Director

(SEAL)

ANNUAL INFORMATION ON SOUTH CAROLINA OPERATIONS

FOR INTEREXCHANGE COMPANIES AND AOS'S

(1) SOUTH CAROLINA OPERATING REVENUES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.

(2) SOUTH CAROLINA OPERATING EXPENSES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.

(3) RATE BASE INVESTMENT IN SOUTH CAROLINA OPERATIONS* FOR 12
MONTHS ENDING DECEMBER 31 OR FISCAL YEAR ENDING _____.

*THIS WOULD INCLUDE GROSS PLANT, ACCUMULATED DEPRECIATION,
MATERIALS AND SUPPLIES, CASH WORKING CAPITAL, CONSTRUCTION
WORK IN PROGRESS, ACCUMULATED DEFERRED INCOME TAX,
CONTRIBUTIONS IN AID OF CONSTRUCTION AND CUSTOMER DEPOSITS.

(4) PARENT'S CAPITAL STRUCTURE* AT DECEMBER 31 OR FISCAL YEAR
ENDING _____.

*THIS WOULD INCLUDE ALL LONG TERM DEBT (NOT THE CURRENT
PORTION PAYABLE), PREFERRED STOCK AND COMMON EQUITY.

(5) PARENT'S EMBEDDED COST PERCENTAGE (%) FOR LONG TERM DEBT
AND EMBEDDED COST PERCENTAGE (%) FOR PREFERRED STOCK AT YEAR
ENDING DECEMBER 31 OR FISCAL YEAR ENDING _____.

(6) ALL DETAILS ON THE ALLOCATION METHOD USED TO DETERMINE THE
AMOUNT OF EXPENSES ALLOCATED TO SOUTH CAROLINA OPERATIONS AS
WELL AS METHOD OF ALLOCATION OF COMPANY'S RATE BASE
INVESTMENT (SEE 13 ABOVE).